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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/535,888	03/27/2000	George McBride	CARDIOBEAT-3	3981

7590 12/17/2002
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EXAMINER

QURESHI, SHABANA

ART UNIT PAPER NUMBER

2155

DATE MAILED: 12/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/535,888	Applicant(s) MCBRIDE ET AL.
Examiner Shabana Qureshi	Art Unit 2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspond nce address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 27 March 2000.
- 2a) This action is FINAL.
- 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-9 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) Interview Summary (PTO-413) Paper No(s) _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finkelstein et al. (U.S. 6,283,923 B1).

As per claims 1 and 9, Finkelstein et al teaches a method comprising:

- a medical testing program (abstract);
- coupling at least one sensor to a computer device, the at least one sensor being coupled to a patient (column 5, lines 12-28);
- uploading the test measurement data to the server via a communications link (column 6, lines 1-6);
- receiving response to test data from the server as a download from the server via the communications link on the computer device (column 6, line 50 – column 7, line 56);
- and
- displaying the processed data (column 199, lines 38-42).

Finkelstein et al teach that the program is software installed on a computer device, but not does not explicitly state that the computer program can be downloaded from the Internet by the user. However, it would have been obvious to one of ordinary skill in the art to allow the software to be downloaded via the Internet so that remote users may download the program to

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their computer device. The process of allowing a software program to be downloaded through the Internet is well known and common in the art. Finkelstein et al also do not explicitly state that the program is executed to obtain test measurement. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made that in order to run the program on a client device, the program must be executed. Finkelstein et al further teach that the test measurement data is sent to a physician so that the physician can analyze or evaluate the data. The physician then sends alerts or responses to the user. It would have been obvious to one of ordinary skill in the art at the time the invention was made to allow the patient to view the measurement data as well as send the data to the data to a physician so that the patient would be able to review the data.

As per claims 2 and 3, Finkelstein et al teach the step of claim 1. Finkelstein et al do not teach the downloading through a server via the Internet or execution of a multimedia instructional guide on the Internet device to instruct the patient in placement of the at least one sensor. However, it would have been obvious to one of ordinary skill in the art to provide instructions for placement of the sensor so that the remote user may utilize the sensor correctly. It is obvious and well known to provide instructions with medical devices such as the sensor in order that accurate data may be collected.

As per claims 4 and 5, Finkelstein et al teach the step of claim 1, comprising the execution of a data verification program on the Internet device prior to uploading the test measurement data (column 6, lines 37-49). Finkelstein et al do not explicitly state the downloading of such a program, but it would have been obvious to one of ordinary skill in the art

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at the time the invention was made that in order to allow the execution of the data verification program, the downloading of such a program would be necessary.

As per claims 6 and 7, Finkelstein et al teach the step of claim 1. Finkelstein et al do not explicitly state the inclusion of an un-install feature of the medical testing device upon completion of a testing sequence or utilizing an encryption program to encrypt the test measurement data. However, un-install features and encryption programs are commonly well known in the art as being features of downloadable programs. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include an un-install feature and an encryption program so that the program does not unnecessarily occupy memory, and the measurement data may securely and confidentially be transmitted via the Internet, respectively.

As per claim 8, Finkelstein et al teach the step of claim 1, further comprising the storing the medical testing program in the device memory (column 5, lines 30-35).

As per claim 9, Finkelstein et al teach the step of claim 8, further comprising:

- storing a testing measurement portion of the medical testing program in the memory for execution (column 5, lines 30-35);
- storing a test diagnostic program portion of the medical testing program in the memory for execution (column 6, lines 25-36; column 199, lines 43-64);
- storing a verification portion of the medical testing program in the memory for execution (column 6, lines 37-49);

Finkelstein et al do not explicitly state the inclusion of an un-install feature of the medical testing device upon completion of a testing sequence or utilizing an encryption program to encrypt the test measurement data. However, un-install features and encryption programs are

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commonly well known in the art as being features of downloadable programs. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include an un-install feature and an encryption program so that the program does not unnecessarily occupy memory, and the measurement data may securely and confidentially be transmitted via the Internet, respectively.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shabana Qureshi whose telephone number is (703) 308-6118. The examiner can normally be reached on Monday - Friday, 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on (703) 305-9648. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for regular communications and (703) 746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

SQ
December 11, 2002


AYAZ SHEIKH
SUPERVISORY PATENT EXAMINER
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